

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 577

Introduced by Brashear, 4

Read first time January 12, 2001

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 29-3001 and 29-3004, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to postconviction
4 proceedings; to provide for performance of fingerprint
5 and forensic DNA testing; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3001, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3001. (1) A prisoner in custody under sentence and
4 claiming a right to be released on the ground that there was such a
5 denial or infringement of the rights of the prisoner as to render
6 the judgment void or voidable under the Constitution of this state
7 or the Constitution of the United States, may file a verified
8 motion ~~at any time~~ in the court which imposed such sentence,
9 stating the grounds relied upon, and asking the court to vacate or
10 set aside the sentence. The motion may be filed at any time except
11 as provided in subsection (3) of this section.

12 (2) Unless the motion and the files and records of the
13 case show to the satisfaction of the court that the prisoner is
14 entitled to no relief, the court shall cause notice thereof to be
15 served on the county attorney, grant a prompt hearing thereon,
16 determine the issues and make findings of fact and conclusions of
17 law with respect thereto. If the court finds that there was such a
18 denial or infringement of the rights of the prisoner as to render
19 the judgment void or voidable under the Constitution of this state
20 or the Constitution of the United States, the court shall vacate
21 and set aside the judgment and shall discharge the prisoner or
22 resentence him or her or grant a new trial as may appear
23 appropriate. Proceedings under the provisions of sections 29-3001
24 to 29-3004 shall be civil in nature. Costs shall be taxed as in
25 habeas corpus cases.

26 (3) A court may entertain and determine such motion
27 without requiring the production of the prisoner, whether or not a
28 hearing is held. Testimony of the prisoner or other witnesses may

1 be offered by deposition. The court need not entertain a second
2 motion or successive motions for similar relief on behalf of the
3 same prisoner. If the grounds stated by the prisoner in a second
4 or successive motion for relief could have been asserted by the
5 prisoner in a direct appeal or prior motion or were in existence
6 and not raised at the time a prior motion was asserted, the court
7 shall dismiss such motion unless (a) dismissal of such motion would
8 preclude the prisoner from asserting a fundamental or indispensable
9 right, (b) the preclusion of the ability to assert such fundamental
10 or indispensable right will result in a manifest injustice to the
11 prisoner, and (c) the court determines that there is a substantial
12 likelihood of the prisoner succeeding on the merits of his or her
13 assertion of such fundamental or indispensable right.

14 Sec. 2. Section 29-3004, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-3004. (1) The district court may appoint not to
17 exceed two attorneys to represent the prisoners in all proceedings
18 under sections 29-3001 to 29-3004. In a motion for postconviction
19 relief in a capital case, the district court shall appoint two
20 attorneys, and at least one attorney shall:

21 (a) Have been admitted to the practice of law in the
22 State of Nebraska for at least seven years;

23 (b) Be an experienced and active trial practitioner with
24 at least five years experience in criminal litigation, including
25 felony litigation;

26 (c) Have prior experience as counsel in at least three
27 jury or bench trials of serious and complex criminal cases; and

28 (d) Have prior experience as counsel in at least three

1 cases under sections 29-3001 to 29-3004.

2 (2) The district court, upon hearing the application,
3 shall fix reasonable expenses and fees, and the county board shall
4 allow payment to the attorney or attorneys in the full amount
5 determined by the court.

6 (3) The attorney or attorneys shall be competent and
7 shall provide effective counsel.

8 Sec. 3. (1) Notwithstanding the provisions of sections
9 29-3001 to 29-3004, a prisoner in custody under sentence may, at
10 any time, make a motion before the trial court that entered the
11 judgment of conviction in his or her case for the performance of
12 fingerprint or forensic DNA testing on evidence that was secured in
13 relation to the trial which resulted in his or her conviction, but
14 which was not subject to the testing which is now requested because
15 the technology for the testing was not available at the time of
16 trial. Reasonable notice of the motion shall be served upon the
17 state.

18 (2) In his or her motion, a prisoner in custody shall
19 present a prima facie case that alleges that:

20 (a) The identity of the defendant was a material issue at
21 the trial which resulted in his or her conviction;

22 (b) The evidence to be tested has been in a chain of
23 custody sufficient to establish that it has not been substituted,
24 tampered with, replaced, or altered in any material respect; and

25 (c) The results of the testing would be material to the
26 issue of identity.

27 (3) If a prisoner in custody presents a prima facie case,
28 the court may require the state to pay for the performance of such

1 fingerprint or forensic DNA testing.

2 Sec. 4. Original sections 29-3001 and 29-3004, Reissue

3 Revised Statutes of Nebraska, are repealed.